

FILED

JUL 29 1999

**KEVIN E. O'BRIEN, CLERK
UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) In Proceedings Under Chapter 11
)
) Case Nos. 98-12547 through
BCE WEST, L.P., et al.,) 98-12570-ECF-CGC
)
) (Jointly Administered)
)
Debtors.) **AGREED ORDER RE: MOTION BY HMH
RESTAURANTS, INC. TO COMPEL BC
GREAT LAKES, LLC TO ASSUME OR
REJECT NON-RESIDENTIAL REAL
PROPERTY SUBLEASE**
EID: 38-3196719)
)
) Hearing Date: July 29, 1999
) Hearing Time: 3:30 p.m.
)

This matter came before the Court pursuant to the Motion filed by HMH Restaurants, Inc. ("HMH Restaurants") entitled "Motion By HMH Restaurants, Inc. To Compel BC Great Lakes, LLC To Immediately Assume Or Reject Non-Residential Real Property Sublease" (the "Motion"). BC Great Lakes, L.L.C., one of the debtors and debtors in possession in the above-captioned Chapter 11 cases (the "Debtor") filed a Response to the Motion. At the above-referenced date and time, the Court conducted a hearing on the Motion. Based upon the entire record before the Court,

1 THIS COURT FINDS as follows:

2 1. The Court has jurisdiction over the Motion and the
3 matters presented therein pursuant to 28 U.S.C. §§1334 and 157. The
4 Motion presents a "core" proceeding with respect to which the Court
5 may enter a binding Order pursuant to 28 U.S.C. §157(b).

6 2. Under the circumstances, the Motion and the above-
7 referenced hearing thereon were duly and properly noticed in
8 accordance with applicable procedural rules. See also 11 U.S.C.
9 §102(1).

10 3. HMH Restaurants is the sublandlord with respect to the
11 property commonly referred to as Store No. 421, which is a Boston
12 Chicken facility located in Mt. Prospect, Illinois. HMH Restaurants
13 has a base lease with the owner of Store No. 421.

14 4. The Debtor claims it is the sublessee of HMH
15 Restaurants at Store No. 421. Pursuant to the Motion, HMH Restaurants
16 requested that the Court compel the Debtor to assume or reject the
17 sublease for Store No. 421.

18 5. Unless terminated earlier in accordance with its terms,
19 the term of the base lease extends through April 30, 2009. However,
20 the base lease also provides HMH Restaurants with two (2) options to
21 terminate the base lease before April 30, 2009.

22 6. The first early termination option expires on July 31,
23 1999. Specifically, HMH Restaurants is entitled to notify the owner
24 that it is terminating the base lease prior to its full term by
25 providing owner with written notice on or before July 31, 1999, which
26 would result in the base lease terminating at the end of January 2000.

1 7. Under HMM Restaurants' sublease for Store No. 421, HMM
2 Restaurants needs the consent of its sublessee to invoke the early
3 termination provision included in the base lease. The Debtor consents
4 to HMM Restaurants' decision to terminate the base lease effective as
5 of the end of January 2000.

6 8. The Debtor has made the business decision to reject the
7 sublease for Store No. 421 at an appropriate time between the date of
8 this order and the expiration of the termination date of the base
9 lease resulting from HMM's invocation of the early termination
10 provision. The Debtor is hereby authorized to reject its sublease for
11 Store No. 421 during that time period, effective upon Debtor's filing
12 with the Court and service upon counsel for HMM Restaurants of a
13 Notice of Rejection of Sublease.

14 Based upon the foregoing findings and conclusions, and the
15 entire record before the Court, and good cause appearing;

16 IT IS HEREBY ORDERED as follows:

17 A. The Motion is granted;

18 B. The Debtor's decision to reject the sublease for Store
19 No. 421 shall be, and hereby is, approved;

20 C. HMM is authorized to exercise the early termination
21 option; and
22
23
24
25
26

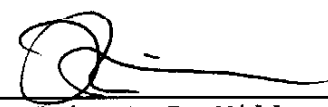
1 D. The Debtor's rejection of the sublease for Store No.
2 421 shall be effective upon Debtor's filing with the Court and service
3 upon counsel for HMH Restaurants of a Notice of Rejection of Sublease.

4
5 DATED this 29 day of July, 1999

6
7 
THE HONORABLE CHARLES G. CASE

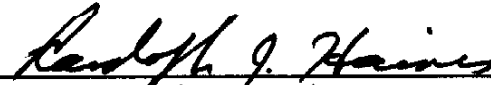
8 APPROVED AND AGREED TO
9 THIS DAY OF JULY,
1999, BY:

10 STREICH LANG
11 A Professional Association
12 Renaissance One
13 Two North Central Avenue
Phoenix, Arizona 85004-2391

14 
15 By Robert J. Miller

16 Attorneys for HMH Restaurants, Inc.

17
18 LEWIS AND ROCA LLP
19 40 North Central Avenue
Phoenix, Arizona 85004-4429

20
21 By 
Randolph J. Haines

22 Co-Counsel for BC Great Lakes, L.L.C.
23
24
25
26